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Government
Publications

BILL 79, THE OCCUPATIONAL HEALTH AND SAFETY AMENDMENT ACT

BILL 79, THE OCCUPATIONAL HEALTH AND SAFETY AMENDMENT ACT

What is the purpose of Bill 79?

The purpose of Bill 79, the Occupational Health and Safety Amendment Act, is to give both workers and the public the right-to-know about hazardous materials used in the workplace.

What are the requirements of Bill 79 regarding worker right-to-know?

Under Bill 79, the employer has duties relating to:

1. workplace inventories,
2. labels,
3. material safety data sheets, and
4. worker training

1. The employer is required to maintain an inventory of all hazardous materials and hazardous physical agents in the workplace. In preparing the inventory, the employer must consult with the joint health and safety committee or a worker representative. Copies of the inventory must be made available to workers, and provided to the joint health and safety committee or a worker representative. Copies of the inventory are also to be provided to the local fire department and the local medical officer of health, as required by regulation, or upon request.
2. The employer is required to ensure that each container of a hazardous material and each source of a hazardous physical agent is labelled or clearly identified.
3. The employer is required to ensure that for every hazardous material in the workplace, an unexpired material safety data sheet is available. Copies of the material safety data sheets are to be made available to

workers, provided to the joint health and safety committee or a worker representative; and provided to the local fire department and the local medical officer of health, upon request.

4. The employer is required to provide workers with instruction and training. In developing the training program, the employer must consult the joint health and safety committee or a worker representative.

In Bill 79, the duties of the employer are set out in broad terms. More specific requirements regarding inventories, labels, material safety data sheets and worker training will be set out in a separate regulation.

How does Bill 79 provide for community right-to-know?

As mentioned above, the employer is required to provide the local medical officer of health with copies of the workplace inventory and of every material safety data sheet, upon request.

The medical officer of health is required to make these copies available to any member of the public who asks to see them.

BILL 79 AND WHMIS

How does Bill 79 fit in with WHMIS?

To put WHMIS into effect across Canada requires complementary federal and provincial legislation. Bill 79 is part of the legislation that Ontario must have in place to participate in WHMIS. In addition, and as indicated in previous sections, a separate regulation setting out the details of the employer duties under WHMIS, is currently being developed. The regulation, and Bill 79, will not come into force until October 31, 1988.

The requirements in Bill 79, for employer responsibility regarding labels, material safety data sheets and worker training, are consistent with the WHMIS requirements. In addition, Bill 79 allows for the WHMIS definition of "hazardous material" to be adopted by regulation, to cover hazardous chemical and biological agents. Bill 79 also allows for the protection of trade secret information and for the Ontario government to adopt the WHMIS mechanism for dealing with trade secret information, namely the Hazardous Materials Information Review Commission.

How is Bill 79 different from WHMIS?

Bill 79 has 3 features that are not a part of WHMIS, but which the Ontario government believes are a valuable addition to right-to-know legislation.

1. While WHMIS covers only hazardous chemical and biological agents, Bill 79 also covers hazardous physical agents. Under Bill 79, the supplier of a thing or device for use in the workplace, which produces a hazardous physical agent when in use, is required to ensure that information on the hazardous physical agent is available. The employer, in turn, is required to obtain information from the supplier, and make it available to workers, and to the joint health and safety committee or to a worker representative.
2. Workplace inventories of hazardous materials are required under Bill 79, but not under WHMIS.
3. WHMIS covers only worker right-to-know, while Bill 79 covers both worker and public right-to-know.

APPLICATION

Bill 79 applies to all workplaces covered by the Occupational Health and Safety Act.

Bill 79

*(Chapter 29
Statutes of Ontario, 1987)*

An Act to amend the Occupational Health and Safety Act

The Hon. W. Wrye
Minister of Labour

<i>1st Reading</i>	June 8th, 1987
<i>2nd Reading</i>	June 22nd, 1987
<i>3rd Reading</i>	June 25th, 1987
<i>Royal Assent</i>	June 29th, 1987



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Bill 79

1987

**An Act to amend the
Occupational Health and Safety Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Occupational Health and Safety Act*, being chapter 321 of the Revised Statutes of Ontario, 1980, as amended by the statutes of Ontario, 1986, chapter 64, section 44, is further amended by adding thereto the following paragraphs:

- 10a. “hazardous material” means a biological or chemical agent named or described in the regulations as a hazardous material;
- 10b. “hazardous physical agent” means a physical agent named or described in the regulations as a hazardous physical agent.

2. Subsection 14 (2) of the said Act is amended by adding thereto the following clause:

- (aa) in a medical emergency for the purpose of diagnosis or treatment, provide, upon request, information in the possession of the employer, including confidential business information, to a legally qualified medical practitioner and to such other persons as may be prescribed.

3. Part IV of the said Act is amended by adding thereto the following sections:

22a.—(1) An employer shall make or cause to be made and shall maintain an inventory of all hazardous materials and all hazardous physical agents that are present in the work place.

Hazardous
materials
inventory

(2) The inventory required by subsection (1),

Idem

- (a) shall contain such information as may be prescribed; and
- (b) shall be prepared in consultation with the committee or health and safety representative, if any, for the work place or with a worker selected by the workers to represent them, if there is no committee or health and safety representative.

Idem

(3) Where an inventory required by subsection (1) is amended during a year, the employer, not later than the 1st day of February in the following year, shall prepare a revised version of the inventory incorporating all changes made during the preceding year.

Identification of ingredients

(4) Where, under the regulations, an employer is required to identify or obtain the identity of the ingredients of a hazardous material, the employer is not in contravention of the regulations if the employer has made every effort reasonable in the circumstances to identify or obtain the identity of the ingredients.

Idem

(5) An employer shall advise a Director in writing if, after making reasonable efforts, the employer is unable to identify or obtain the identity of the ingredients of a hazardous material as required by the regulations.

Exception

(6) Except as may be prescribed, subsection (1) does not apply to an employer who undertakes to perform work or supply services on a project in respect of materials to be used on the project.

Floor plans

(7) The employer shall provide a Director and any other prescribed agencies with a floor plan of the work place showing the names of all hazardous materials and their location.

Hazardous material, labels and data sheets

22b.—(1) An employer shall ensure that,

- (a) every container present in the work place that contains hazardous material is and remains labelled in the prescribed manner;
- (b) an unexpired material safety data sheet, containing such information and in such form as may be prescribed, is obtained or prepared by the employer; and
- (c) labels and material safety data sheets required by clauses (a) and (b) are available in English and such other language or languages as may be prescribed.

(2) No person shall remove, alter or deface a label Prohibition described in clause (1) (a) that is on a container.

(3) An employer shall ensure that a hazardous material is ^{Idem} not used at a work place unless the prescribed requirements concerning labelling, material safety data sheets and worker instruction and training have been complied with.

(4) An employer shall advise a Director in writing if the employer, after making reasonable efforts, is unable to obtain a label or material safety data sheet required by subsection (1).

(5) A material safety data sheet expires three years after the date of its publication.

22c.—(1) A copy of the most recent version of the inventory and of every unexpired material safety data sheet required by this Part in respect of hazardous materials in a work place shall be,

- (a) made available by the employer in the work place in such a manner as to allow examination by the workers;
- (b) furnished by the employer to the committee or health and safety representative, if any, for the work place or to a worker selected by the workers to represent them, if there is no committee or health and safety representative;
- (c) furnished by the employer to the medical officer of health of the health unit in which the work place is located;
- (d) furnished by the employer to the fire department which serves the location in which the work place is located; and
- (e) filed by the employer with a Director.

(2) The medical officer of health, at the request of any person, shall request an employer to furnish a copy of the most recent version of the inventory or of an unexpired material safety data sheet, as the case may be.

(3) At the request of any person, the medical officer of health shall make available to the person for inspection a copy of any inventory or material safety data sheet requested by ^{Idem}

Notice to
Director

Expiry of
material
safety data
sheet

Inventory
and material
safety data
sheets to be
made
available

Public access

the person and in the possession of the medical officer of health.

Idem

(4) A medical officer of health shall not disclose the name of any person who makes a request under subsection (2) or (3).

Additional requirement

(5) In addition to the requirements imposed under subsection (1), a copy of every material safety data sheet required by subsection (1) shall be made available by the employer in the work place in such a manner that it is readily accessible by all workers who may be exposed to the hazardous material to which it relates.

Time for compliance

(6) The Lieutenant Governor in Council may by regulation establish dates by which employers in any industry or class of industry must provide inventories or inventories and material safety data sheets under clauses (1) (c), (d) and (e) and an employer to whom the regulation applies shall have until that date to comply with those clauses unless the medical officer of health, the fire department or a Director requests the employer to provide a copy of the most recent version of the inventory or of an unexpired material safety data sheet.

Assessment for hazardous materials

22d.—(1) Where so prescribed, an employer shall assess all biological and chemical agents produced in the work place for use therein to determine if they are hazardous materials.

Assessments to be made available

(2) The assessment required by subsection (1) shall be in writing and a copy of it shall be,

(a) made available by the employer in the work place in such a manner as to allow examination by the workers;

(b) furnished by the employer to the committee or health and safety representative, if any, for the work place or to a worker selected by the workers to represent them, if there is no committee or health and safety representative.

Confidential business information

22e.—(1) Where, but for this section, an employer would be required under this Part to disclose information that the employer considers to be confidential business information in an inventory, label or material safety data sheet, the employer may, in accordance with the regulations, file a claim with the claims board for an exemption from the requirements.

(2) The claims board, in accordance with its procedures, shall determine the validity of every claim filed under subsection (1). Determination of claim

(3) The employer or any worker of the employer or any trade union representing the workers of the employer may, in accordance with the regulations, appeal a determination made under subsection (2). Appeal

(4) The claims board, in accordance with its procedures, shall determine every appeal under subsection (3). Determination of claim

(5) Information that an employer considers to be confidential business information is exempt from disclosure from the time a claim is filed under subsection (1) until the claim is finally determined and thereafter, if the claim is found to be valid. Effect of claim

(6) Where the Parliament of Canada establishes an agency that has the power to determine whether information related to any hazardous material is confidential business information, the Lieutenant Governor in Council may by regulation name that agency as the claims board and adopt its procedures for the purposes of this section. Federal agency

(7) In this section, "claims board" means an agency designated by the regulations as the claims board. Definition

22f.—(1) A person who distributes or supplies, directly or indirectly, or manufactures, produces or designs a thing for use in a work place that causes, emits or produces a hazardous physical agent when the thing is in use or operation shall ensure that such information as may be prescribed is readily available respecting the hazardous physical agent and the proper use or operation of the thing. Hazardous physical agents

(2) Where an employer has a thing described in subsection (1) in the work place, the employer shall ensure that the information referred to in that subsection has been obtained and is, Duty of employer

(a) made available in the work place for workers who use or operate the thing or who are likely to be exposed to the hazardous physical agent; and

(b) furnished by the employer to the committee or health and safety representative, if any, for the work place or a worker selected by the workers to represent them, if there is no committee or health and safety representative.

Notices

(3) An employer to whom subsection (2) applies shall post prominent notices identifying and warning of the hazardous physical agent in the part of the work place in which the thing is used or operated or is to be used or operated.

Idem

(4) Notices required by subsection (3) shall contain such information as may be prescribed and shall be in English and such other language or languages as may be prescribed.

Instruction and training

22g.—(1) In addition to providing information and instruction to a worker as required by clause 14 (2) (a), an employer shall ensure that a worker exposed or likely to be exposed to a hazardous material or to a hazardous physical agent receives, and that the worker participates in, such instruction and training as may be prescribed.

Consultation

(2) The instruction and training to be given under subsection (1) shall be developed by the employer in consultation with the committee or health and safety representative, if any, for the work place.

Review

(3) An employer shall review, in consultation with the committee or health and safety representative, if any, for the work place, the training and instruction provided to a worker and the worker's familiarity therewith at least annually.

Idem

(4) The review described in subsection (3) shall be held more frequently than annually, if,

- (a) the employer, on the advice of the committee or health and safety representative, if any, for the work place, determines that such reviews are necessary; or
- (b) there is a change in circumstances that may affect the health or safety of a worker.

4. Clause 28 (1) (l) of the said Act, exclusive of the sub-clauses, is repealed and the following substituted therefor:

- (l) require in writing, within such time as is specified, a person who is an employer, manufacturer, producer, importer, distributor or supplier to produce records or information, or to provide, at the expense of the person, a report or evaluation made or to be made by a person or organization having special, expert or professional knowledge or qualifications as are specified by the inspector of any process or biological, chemical or physical agents or combina-

tion of such agents present, used or intended for use in a work place and the manner of use, including,

5. Section 29 of the said Act is amended by adding thereto the following subsection:

(4a) In addition to the orders that may be made under subsection (4), where an inspector makes an order under subsection (1) for a contravention of section 22b or 22f or a Director has been advised of an employer's inability to obtain an unexpired material safety data sheet, the inspector may order that the hazardous material shall not be used or that the thing that causes, emits or produces the hazardous physical agent not be used or operated until the order is withdrawn or cancelled.

Additional orders

6. Section 34 of the said Act is amended by adding thereto the following subsection:

(4) Subsection (1) does not apply so as to prevent any person from providing any information in the possession of the person, including confidential business information, in a medical emergency for the purpose of diagnosis or treatment.

Medical emergencies

7. Subsection 41 (2) of the said Act is amended by striking out "and" at the end of paragraph 22 and by adding thereto the following paragraph:

24. prescribing by name or description any biological or chemical agent as a hazardous material and any physical agent as a hazardous physical agent.

8. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commencement

9. The short title of this Act is the *Occupational Health and Safety Amendment Act, 1987.*

Short title

